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Communiqué

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*Mr. Colliard's biography (1985)
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No. 84/32
8 October 1984

Military and Paramilitary Activities in and against Nicaragua
(Nicaragua v. United States of America)

The following information is made available to the press by the Registry of the International Court of Justice:

On 8 October 1984 at 3.00 p.m. the International Court of Justice commenced its public hearings on the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) in the Great Hall of Justice of the Peace Palace. In the course of these hearings, the Court will consider the oral arguments put forward firstly by Nicaragua and then by the United States, regarding the questions of whether it has jurisdiction to decide on the merits of the case and whether the application filed by Nicaragua against the United States is admissible. At this initial hearing, Nicaragua, by agreement of the Parties, as approved by the Court, began to present its arguments.

At the beginning of the hearing Mr. C.A. Colliard, the judge ad hoc nominated by Nicaragua to take part in the case, made the solemn declaration required by Article 20 of the Statute of the Court. Mr. Colliard's biography is attached.

Before giving the floor to the Agent of Nicaragua, the President of the Court read out the operative part of the Order that had been adopted by the Court on 4 October 1984 regarding the Declaration of Intervention by El Salvador (cf. Press communiqué No. 84/30).

The operative provisions of the Order are as follows:

"The Court,

(i) By nine votes to six,

Decides not to hold a hearing on the Declaration of Intervention of the Republic of El Salvador,

IN FAVOUR: President Elias; Vice-President Sette-Camara;
Judges Lachs, Morozov, Nagendra Singh, Oda, El-Khani,
Mbaye, Bedjaoui.

AGAINST: Judges Ruda, Mosler, Ago, Schwebel, Sir Robert Jennings,
de Lacharrière.

(ii) By...

(ii) By fourteen votes to one,

Decides that the Declaration of Intervention of the Republic of El Salvador is inadmissible insofar as it relates to the present phase of the proceedings instituted by Nicaragua against the United States of America.

IN FAVOUR: President Elias; Vice-President Sette-Camara;
Judges Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Oda,
Ago, El-Khani, Sir Robert Jennings, de Lacharrière, Mbaye,
Bedjaoui.

AGAINST: Judge Schwebel."

Judges Nagendra Singh, Oda and Bedjaoui appended separate opinions to the Order; Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière appended a joint separate opinion and Judge Schwebel appended a dissenting opinion.

A brief account of these opinions is attached.

Biography of Claude-Albert Colliard

Born in Marseilles on 14 July 1913.

Doctor of Laws in 1938, Doctor of Literature.

Agrégé of the Faculties of Law (public law) in 1945.

Professor of international law at the Faculty of Law of Grenoble in 1946; Dean of that faculty from 1952 to 1955, 1955 to 1958 and 1958 to 1959.

Professor at the Faculty of Law and Economic Science of Paris from 1959 to 1971. Dean's Assessor from 1967 to 1971. Professor at the Université Paris I Panthéon Sorbonne from 1971 onwards. Director of the Department (UER) "Développement, études internationales et comparatives" from 1971 to 1982. Professor Emeritus of the Université Paris I. Honorary Dean. Director of the Centre d'études et de recherches de droit international of Paris I. Professor at the Institute of Political Studies in Paris.

Member of the Institute of International Law. Member of the Société française de droit international. Member of the Académie astronautique internationale. Vice-Chairman of the International Association of Constitutional Law. Honorary doctorates from the Universities of Lodz (Poland), Fribourg (Switzerland) and Belgrade (Yugoslavia).

Various teaching posts (as guest professor) at foreign Universities: Algeria, Morocco, Tunisia, Cameroon, Madagascar, Egypt, Turkey, Yugoslavia, Romania, Czechoslovakia, Poland, United Kingdom, Canada, Mexico, Chile, Belgium and Iran. Took part in numerous colloquia, seminars and scientific meetings in Algeria, Egypt, Yugoslavia, Czechoslovakia, USSR, Poland, Mexico, Chile, Canada.

Courses at The Hague Academy of International Law:

In 1968: International rivers; in 1976: General Course on Public International Law.

Chairman of the jury d'agrégation de droit public in 1974. Chairman of the jury for the admission to the Ecole nationale d'administration in 1981.

Member of the French delegation to the United Nations General Assembly (1953 and 1954) Sixth Committee. Member of the French delegation to the Third Conference on the Law of the Sea in 1981 and 1982. French representative (head of delegation) on the United Nations Commission of Human Rights (1982, 1983, 1984). Member of the Committee of Independent Experts set up by Unesco in 1972 on the problems of audio-visual communications. A Consultant to OECD in 1976 and 1977.

Member of the group of eleven legal experts of Intelsat to settle disputes (elected in 1976 and again in 1978, 1980 and 1983).

Author...

Author of several works on public international law and public municipal law, in particular: Institutions des relations internationales, the 8th edition of which is in course of publication (translated into Spanish and Russian). Libertés publiques, 6th edition, 1983. Author of more than one hundred articles on international law, European law, administrative law, constitutional law and financial law.

Appeared before the Court as Counsel in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) and took part in the stage of the proceedings concerning the Italian application for permission to intervene in the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta).

Summary of opinions appended to the Order of the Court

Separate opinion by Judge Nagendra Singh

In his separate opinion Judge Nagendra Singh pointed out that since El Salvador's Declaration to Intervene at this stage of the proceedings really pointed to merits of the case and if a hearing was granted now there would inevitably be arguments on merits of the case which would lead to two hearings on merits - the first now and the second if and when the Court deals with the merits of the case. This would be confusing and undesirable as well as untenable. The Court, therefore, has put things in their proper order and sequence and noted the intention of El Salvador to intervene at the next phase of the case if and when the Court considers the merits of the dispute. El Salvador has therefore not had a raw deal, as it were, because the Court has kept alive the right of intervention which could be examined at the subsequent phase of the case. There was no point in giving a hearing at the present phase when the Court had by 14:1 come to the conclusion that the intervention of El Salvador was inadmissible. In the circumstances El Salvador will be heard at the proper time, taking into consideration the reasoning and arguments that had been submitted to the Court by El Salvador in support of their intervention.

Joint separate opinion by Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière

Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière appended a joint separate opinion to the effect that, although agreeing with the Court that El Salvador's Declaration of Intervention is inadmissible at the present stage of the proceedings, they are of the opinion that it would have been more in accordance with judicial propriety if the Court had granted a hearing to the State seeking to intervene.

Separate...

Separate Opinion by Judge Oda

Judge Oda considered that El Salvador's Declaration of Intervention of 15 August 1984 was vague and did not appear to satisfy the requirements of Article 82 (b) and (c) of the Rules of Court for an intervention at the present stage, but it was later supplemented by its communications of 10 and 17 September which might meet the terms of Article 82. To his regret, the Court, which only had before it the views of Nicaragua and the United States on the first submission of El Salvador, did not ascertain their views on the two subsequent communications from El Salvador, in particular on the admissibility of El Salvador's intervention at the jurisdictional stage.

If Nicaragua's observations had been interpreted, as Judge Oda believed they should, as objecting to El Salvador's intervention at that stage, Article 84, paragraph 2, would have clearly applied. He voted against a hearing only because his interpretation of the Court's view was that Nicaragua had not objected.

Judge Oda also regretted that 8 October had already been fixed for the commencement of the oral hearings between Nicaragua and the United States, even before the Court met to deal with El Salvador's Declaration on 4 October. In fact, El Salvador's request for an oral hearing and the admissibility of its intervention at the present jurisdictional stage were both dealt with on 4 October, after only one day's deliberations.

Had it not been for the above, El Salvador's Declaration might well have been the first case of intervention under Article 63 of the Statute to be considered by the Court at a jurisdictional phase of a case.

Separate opinion by Judge Bedjaoui

Judge Bedjaoui indicated that in his opinion one could not be in favour of dismissing the request for intervention and at the same time in favour of holding a hearing in order to examine such a request. Since the Court had reached the conclusion that El Salvador's request for intervention was inadmissible, the holding of a hearing no longer logically had an object.

Dissenting opinion by Judge Schwebel

Judge Schwebel dissented from the Court's Order on two grounds. He maintained that the decision of the Court not to hold a hearing on the declaration of El Salvador was a departure from the due process of law which the Court has traditionally observed. He concluded that, while the matter was not altogether clear, El Salvador was entitled to intervene, and that, once the Court had declined to hear El Salvador, any doubts should have been resolved in favour of the admissibility of its declaration of intervention.

Judge Schwebel interpreted El Salvador's declaration as a request to intervene on the construction of articles of the Statute of the Court, the United Nations Charter and three inter-American treaties, as well as of declarations submitted to the Court under its Statute accepting its compulsory jurisdiction. In his view, Nicaragua, while purporting not to object to El Salvador's intervention, had raised objections which required a hearing under the mandatory provision of Article 84(2) of the Court's Rules, which provides that, if an objection is filed to the admissibility of a declaration of intervention, "the Court shall hear the State seeking to intervene and the parties before deciding". He maintained that El Salvador's declaration was admissible, first, because intervention under Article 63 of the Court's Statute may take place at a jurisdictional stage, and, second, because it may relate to the construction of conventions which include the United Nations Charter and the Court's Statute as well as the inter-American treaties which El Salvador had cited. If declarations adhering to the Court's compulsory jurisdiction were not to be treated as conventions, then the Court should have barred only that aspect of El Salvador's intervention.
